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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

16 **ELOY ORTIZ OAKLEY, in his official
17 capacity as Chancellor of California
18 Community Colleges et al.,**

19 Plaintiffs,

20 v.

21 **BETSY DEVOS, in her official capacity as
22 the United States Secretary of Education;
U.S. DEPARTMENT OF EDUCATION,**

23 Defendants.

24 Case No. 20-cv-03215-YGR

25 **JOINT CLARIFICATION IN RESPONSE
26 TO COURT'S ORDER OF DECEMBER
27 15, 2020**

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1 In response to the Court's Order of December 15, 2020 [ECF 57], the Parties respectfully
 2 submit this joint clarification in regard to the joint proposed briefing schedule and proposed order
 3 filed on December 14, 2020 [ECF 56].

4 The Parties agree that Plaintiffs' Amended Complaint, filed as a matter of course pursuant
 5 to Fed. R. Civ. P. 15(a)(1)(B) on November 6, 2020 [ECF 55], is currently the operative
 6 complaint in this case. The Court may address the parties' cross-motions for summary judgment
 7 before the defendant files an answer. *See Gifford v. Travelers Ass'n of America*, 153 F.2d 209,
 8 210 (9th Cir. 1943); *see also Marquez v. Cable One, Inc.*, 463 F.3d 1118, 1120 (10th Cir. 2006)
 9 (holding that federal rules permit consideration of summary judgment before an answer). An
 10 answer is also unlikely to play any role in the issues before the Court in this case because the
 11 constitutional and Administrative Procedure Act claims raised in the Amended Complaint can be
 12 resolved on undisputed facts available through the administrative record or judicial notice, and
 13 without discovery.¹

14 Here, the Parties contemplate that in the interest of judicial economy, Defendants will
 15 merge any arguments that they would have asserted in a motion to dismiss in response to the
 16 Amended Complaint into their initial motion for summary judgment. By so doing, the Parties
 17 may avoid the briefing and resolution of a motion to dismiss the Amended Complaint, and,
 18 should that motion be denied, undergoing another round of briefing on the parties' cross-motions
 19 for summary judgment.

20 Given the posture of the case and lack of factual dispute, the Parties propose a schedule
 21 for cross-motions for summary judgment that would be based on the Amended Complaint as the
 22 operative complaint, and further propose that Defendants' obligation to file an answer be stayed
 23 pending the Court's resolution of the Parties' cross-motions for summary judgment.

24 The Parties thus respectfully request that the Court enter an order for the following

25
 26 ¹ Plaintiffs reserve the right to submit material outside the administrative record in support
 27 of their cross-motion for summary judgment in accordance with applicable law. *See, e.g., Lands*
Council v. Powell, 395 F.3d 1019, 1030 (9th Cir. 2005) (describing exceptions to general rule that
 28 review of agency action is limited to administrative record). Defendants, in turn, reserve the right
 to contest Plaintiffs' submission of extra-record material. The Parties nevertheless agree that an
 answer is not likely to play a role in the Court's resolution of any such dispute.

1 proposed briefing schedule on the merits, and stay Defendants' December 21 deadline to respond
2 to Plaintiffs' Amended Complaint pending resolution of the Parties' dispositive motions:

- 3 • **January 19, 2021:** Defendants' motion for summary judgment, not to exceed 40
4 pages.
- 5 • **February 26, 2021:** Plaintiffs' combined opposition to Defendants' motion for
6 summary judgment and cross-motion for summary judgment, not to exceed 45
7 pages.
- 8 • **March 19, 2021:** Defendants' combined opposition to Plaintiffs' cross-motion for
9 summary judgment and reply to Plaintiffs' opposition to Defendants' motion for
10 summary judgment, not to exceed 35 pages.
- 11 • **April 2, 2021:** Plaintiffs' reply to Defendants' opposition to Plaintiffs' cross-
12 motion for summary judgment, not to exceed 30 pages.
- 13 • In accordance with Local Rule 7-2(a), the Parties request an oral hearing on
14 April 20, 2020, or at the Court's convenience.
- 15 • If the issues in this case remain pending after the Court's decision on the cross-
16 motions for summary judgment, the Parties agree to meet and confer within 14
17 days of the Court's ruling on the motions to discuss a schedule for further
18 proceedings.

19 Should the Court reject the Parties' request to stay Defendants' deadline to respond to
20 Plaintiffs' Amended Complaint and instead require Defendants to file an answer prior to cross-
21 motions for summary judgment, the Parties propose that the answer be due on January 10, 2021,
22 prior to the commencement of the briefing schedule set forth above.

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1 Dated: December 16, 2020

Respectfully submitted,

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9 JULIA HARUMI MASS
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13 /s/ Jasleen K. Singh

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ATTESTATION OF SIGNATURES

I, Jasleen K. Singh, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

/s/ Jasleen K. Singh

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